MINISTRY OF TRADE
THE SOCIALIST REPUBLIC OF VIETNAM

Free Translation

15th October, 2004

The Honorable Donald L. Evans
Secretary of Commerce
U.S. Department of Commerce
Washington, D.C. 20230

Re: Second Round of Comments on Separate Rates Practice in Antidumping Proceedings Involving Non-Market Economy Countries

Dear Mr. Secretary:

I am writing to you regarding the Department's September 20, 2004 supplemental request for comments on potential changes to its "separate rates" policy for non-market economy antidumping investigations. 69 Fed. Reg. 56,188.

As indicated in my previous comments, submitted on June 1, 2004, we believe the Department should adopt a separate rate policy that reflects the United States' commitment to liberalizing trade relations between our two countries. It should not, therefore, undertake policy changes that make it any more difficult for companies to obtain separate rate status.

Concerning the specific three proposals identified in the Department's latest notice on this topic, I offer the following:

1. Application Process

The Department proposes to change its separate rates process from a Section A response process to an application process. In the application form, the Department would list the documents required of an applicant who wishes to receive a separate rate, and would reject any application that is incomplete. In order to streamline the process, the application form would focus on only the information most relevant to separate rate eligibility.

Although we agree that an application process of this sort would be better than the current Section A process, we continue to believe that the entire separate rate policy is

unfair and unnecessary and should be either eliminated or severely truncated. Clearly, the Department's assumption of a monolithic state-controlled enterprise no longer holds. The Department should welcome, not discourage, this development. As such, rather than adopt an application process that essentially maintains the current separate rate policy, we recommend one of the other three options that were articulated in the comments offered by the VASEP Shrimp Committee in their June 1, 2004 submission (and again today). Any of these would be better than the application process the Department now proposes.

If, however, the Department decides to utilize the application process set forth in its notice, we propose that further thought be given to what exactly would be required of the applicants, and that we be given another opportunity to comment on the application once a draft is prepared. Of course, we agree with the idea of reducing the amount of information requested of separate rate candidates, and the Department appears to contemplate focusing on only the information that is most critical to the questions of *de jure* and *de facto* independence. However, the Department has not provided the specific items it will request, as the Department apparently has not yet chosen precisely what information it will request in the application.

In the meantime, we propose that the Department refrain from seeking documentation from the respondents that exceed the scope of Question 2 of the NME Section A questionnaire or do not otherwise directly relate to the *de jure* and *de facto* criteria. We also urge the Department to eliminate its policy requiring separate rate candidates to have exported to the United States during the period of investigation in order to be eligible. This policy unfairly prohibits companies who normally sell to the United States, or who may have plans to sell to the United States, from obtaining separate rate status simply because they did not have shipments to the United States during a recent six-month period. We also recommend that the Department take care not to establish too strict a policy with regard to the documentation it requires in its application. There may be instances in which a company does not maintain the specific records the Department ideally wants, but the company may have other documentation that proves the same thing. (A good example would be evidence of price negotiation, which for some companies is conducted mostly by telephone.)

Assuming our recommendations are adopted, we think the application process -- though not ideal -- represents an improvement as compared with current policy.

2. Combination Rates

The Department proposes to alter its current separate rate analysis so as to limit

the instances in which an exporters' shipments to the United States will be subjected to the exporter's separate rate as announced in the final determination of the investigation. Specifically, if an exporter receives and resells product from another producer, the exporter's rate will apply only if it had done business with the producer during the course of the original investigation period.

In our view, a company's entitlement to separate rate status should not be defined by which company produced the product. After all, it is the exporter whose independence from the government matters, as it is that company's business operations and export pricing practices that are at issue in determining separate rate status. A company's independence from the government does not change simply because it purchases product from a company that it did not do business with during a six month period of investigation.

Determination of separate rate status -- if it must exist at all-- should remain a clean, substantive analysis based on the *de jure/de facto* criteria that the Department uses now. An exporter would receive a separate rate only if it demonstrated its independence from government control. Who it does business with should be largely immaterial.

We note too that this proposed policy change would create more work for the Department, which is ironic given that the original motivation for its proposed separate rate policy changes was to reduce the burden on the Department.

We are not proposing that the Department ignore the issue of evasion, to the extent such practices motivate this particular aspect of the Department's proposals. However, the Department can use existing methods for policing such evasion, as it does in market economy cases as well. The administrative review process provides the Department with a method by which to ensure that it captures all of the shipments an exporter receives from its suppliers, each of whom will be required to submit to the Department's factors of production verification. The Department can also determine at that time, as it does in market economy cases, whether the producer knew the destination of the product it sold to the exporter. This should be sufficient to address any evasion concerns the Department has with regard to producer/exporter transactions, and would not unnecessarily burden -- or discriminate against -- separate rate applicants.

3. Third Country Exporters

The Department proposes to assume that NME producers shipping through third countries set the price to the United States, and to assign to them, and not the reseller, an antidumping duty rate, unless evidence is submitted to the contrary. We think this proposal, like the second one above, deviates from the whole point of the separate rate

analysis, as it has always been articulated by the Department. What matters is whether the seller to the U.S. customer is independent of the government. The exception to this that already exists is in those situations where the seller is in a third country and the seller's supplier knows to which market the product is ultimately shipped. But, if the supplier does not know where the product is shipped, then it is irrelevant whether the supplier is independent of the government or not.

If the Department is concerned with evasion, changes to its separate rate policy does not appear to be the answer. Rather, the Department needs to develop a policing system, which it could apply to all countries -- not just non-market economies -- so as to prevent companies with high antidumping duty rates from selling to the United States through companies with low rates. We are afraid that companies seeking separate rate status in non-market economies are becoming the scapegoat for a supposed "evasion" problem the Department perceives that has nothing to do with whether or not companies are independent of the government of the country in which the product is produced.

Mr. Secretary, as you know, there has been much progress in the trade relations between our countries. Since the entry into force of the Bilateral Trade Agreement, our joint trade has increased tremendously. As you also realize, Vietnam has implemented very significant and far-reaching economic reforms. Even the Department recognizes that the Government of Vietnam no longer legally controls private or even state-owned enterprises. Market forces determine wages in Vietnam. Small- and medium-sized businesses are flourishing.

In the spirit of cooperative relations and to further promote bilateral trade between our countries, I ask for your full consideration for moving Department policy forward rather than backward by leaving behind the countrywide-rate assumption. If not, I hope you will implement a reasonable application process -- one that does not place on exporters any unnecessary burdens or limitations on their ability to obtain separate rate status.

We are looking forward to receiving your positive response.

Respectfully,

Signed

Truong Dinh Tuyen
Minister
Ministry of Trade
Socialist Republic of Vietnam

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